In the High Court of Judicature at Madras

Dated : 06.11.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S. TAMILVANAN

Habeas Corpus Petition No.698 of 2006

Farzana Haji Sumar .. Petitioner

vs.

1. The State of Tamil Nadu
   rep. by the Secretary to Government
   Public (SC) Department
   Fort St. George, Chennai 60 009.

2. The Union of India rep. by
   The Secretary to the Government
   Ministry of Finance,
   Department of Revenue
   (COFEPOSA-UNIT), New Delhi. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of writ of habeas corpus calling for the records of the I respondent in G.O.SR.1/418-3/06 Public (SC) Department dated 30.6.2006 and quash the same and produce the detenu before this Court and set him at liberty, the detenu Haji Sumar S/O. Khuddus now confined in Central Prison, Chennai under COFEPOSA.

For petitioner : Mr. B. Kumar, Sr. Counsel
for Mr. R. Loganathan
For respondents : Mr. M. Babu Muthu Meeran
Addl. Public Prosecutor for R.1
Mr. P. Kumaresan, ACGSC for R.2

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ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

In this petition, the petitioner, by name, Farzana Haji Sumar, challenges the detention order dated 30.06.2006, passed by the first respondent herein detaining her husband, Haji Sumar under Section 3(1)(i)

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of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974)(in short "COFEPOSA").

2. Heard the learned senior counsel for the petitioner, learned Additional Public Prosecutor for first respondent and learned Additional Central Government standing counsel for second respondent.

3. At the foremost, Mr. B. Kumar, learned senior counsel for the petitioner submitted that inasmuch as the crucial and important document, viz., ""Certificate of Origin"" has not been furnished in full to the detenu, there is no proper communication of grounds. According to him, the document contains authentication by Sri Lankan Embassy and since the whole backside of the document has not been supplied to the detenu, the detention order is vitiated. Elaborating the above contention, the learned senior counsel submitted that the grounds of detention show that the "Certificate of Origin" has been signed by the Managing Director of M/s. Spiceco International (Pvt.) Ltd., and the detenu arranged for signature of the officials in the Department of Commerce, Sri Lanka and for stamp impression in the said certificate. According to him, though grave allegation is made against the detenu that he manipulated the documents, including the "Certificate of Origin", yet, a portion of the certificate which contains the signature of the officials of the Department of Commerce as well as stamp impression of that country has been omitted to be supplied. He further submitted that this has seriously disabled the detenu from understanding the various allegations that are made against him. He also contended that if what is supplied to the detenu alone has been placed before and considered by the Detaining Authority, then it would be a serious non-application of mind on the part of the Detaining Authority. He next contended that the detenu knows only Gujarati to read and write and he does not know Tamil or English to read, though he has smattering knowledge in Tamil and English to speak and understand, if spoken to. He further contended that even though the grounds of detention are given in Gujarati, almost all the documents, which are in English have not been translated and supplied to the detenu in Gujarati and non-supply of all or any one of the documents is clearly an infringement of right under Article 22 (5) of the Constitution of India and the detention order is void. He further contended that translation of the grounds in Gujarati is also defective, since most of the words are not translated at all. He finally submitted that the representation sent to the Government has not been disposed of and the pre-detention representation sent to Ministry of Law has also not been disposed of by the Government, which vitiates the detention order.

4. Learned Additional Public Prosecutor by placing original records and taking us through the counter affidavit filed by the first respondent, met all the contentions.

5. The grounds of detention show that cloves and betel nuts of Indonesian origin were imported into India by declaring them as they were

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of Sri Lankan origin by forging documents of a sovereign nation, viz., Sri Lanka to gain duty benefits under the Indo-Sri Lanka free trade agreement and the notification issued thereunder and the conscious involvement of the detenu in the said transactions has been well established by materials placed before the detaining authority and furnished to the detenu. We have to find out whether the detenu was provided with all relied upon documents and afforded opportunity to make effective representation.

6. Coming to the first contention, viz., non-supply of backside of the document, namely, "Certificate of Origin", Mr. B. Kumar, learned senior counsel has brought to our notice the backside of the said document, which contains general conditions as well as signature and seal of the Deputy High Commissioner, Republic of Sri Lanka. We verified the said document as well as the other documents supplied to the detenu. It is the claim of the Department that it is the detenu, viz., Haji Sumar, who manipulated the documents as if cloves and betel nuts were imported from Sri Lanka, whereas, in fact, those items were imported from Indonesia. It is also the case of the Department that it is the detenu who forged all the import documents and by illicit transaction, he wanted to evade customs duty of several lakhs. It is also brought to our notice that as per the report dated 29.05.2006 of Customs of Sri Lanka, the "Certificate of Origin" submitted along with the import documents was forged and issued to parties other than M/s. Spiceco in respect of goods other than the goods imported by M/s. Diamond Traders. Admittedly, the backside of the "Certificate of Origin" has not been supplied to the detenu along with grounds of detention. Apart from the general conditions, the backside of the said document contains signature and seal of the Deputy High Commissioner, Sri Lanka. It is the definite stand of the Department that the said document was forged by the detenu.

7. A perusal of the photo copy of the "Certificate of Origin" given along with the grounds shows that what is contained in Column 8 is not furnished. In Column 8, it is mentioned, "Origin Criterion (See Notes overleaf) "A". It is the grievance of the petitioner that in the copy of "Certificate of Origin" supplied to the detenu, the overleaf of document is blank and hence, the detenu is greatly prejudiced. It is the claim of the petitioner that if that document had been furnished with a translated copy in Gujarati, the detenu would have satisfied the authority concerned as to the authenticity of the "Certificate of Origin". It is brought to our notice that the detenu had produced the said documents including the "Certificate of Origin" as if received from Sri Lanka to the Sri Lankan Embassy at Chennai. These sets of export documents received from Sri Lanka including the "Certificate of Origin" were duly authenticated by the Consular official of Sri Lankan Embassy at Chennai. It is also brought to our notice that necessary fee has also been paid for each set of export documents. It is the claim of the petitioner that deliberately the copy of authentication given by the Sri Lankan Embassy was not given to the detenu and according to the learned senior counsel, it is the gravest violation and the detaining authority was kept in dark of a vital part of

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the "Certificate of Origin". We also verified the backside of the "Certificate of Origin". As rightly pointed out by the learned senior counsel for the petitioner, it contains not only the general conditions as contended by the learned Additional Public Prosecutor, but it contains authentication by the Deputy High Commissioner of Sri Lankan Embassy to the effect that "without any commitment to its contents the signature appearing herein is that of the Duly Authorised Officer." It also contains the seal of Department of Commerce, Colombo, Sri Lanka (Ceylon) and a number showing its authenticity. In view of the allegation against the detenu that he forged the signatures of the Sri Lankan officials, we are of the view that it is but proper on the part of the officials/authorities to supply to the detenu not only the "Certificate of Origin", but also the backside of the said certificate which contains the material details, namely, the "Certificate of Origin" in full.

8. The importance of authentication by Embassy is to be seen from the diplomatic and Consular Office (Fees) Act, 1938. Under Section 3(2) of the Act, this authentication makes documents admissible in foreign country. If the authentication is not genuine, it is punishable under Section 4. Thus, authentication is specifically required for the genuineness of the signature appearing in the "Certificate of Origin". We are satisfied that the vital endorsement on the "Certificate of Origin" issued by the Embassy of Sri Lanka which would have gone in favour of the detenu had it been placed/considered, was not placed before or considered by the detaining authority; therefore, the satisfaction is seriously vitiated.

9. Having regard to the importance of "Certificate of Origin", it is stated that it is printed on special paper at the Security Press and it also contains a distinctive number, on the backside of each paper like that of a currency note. As rightly pointed out, the backside of the "Certificate of Origin" which contains a distinctive number, and several entries including the Certificate of authentication and the seal of Deputy High Commissioner certifying as to the genuineness of the signature appearing on the face of document have not been supplied to the detenu. It is also brought to our notice that there is no evidence to show that these were placed before the Government. This shows serious non-application of mind on the part of detaining authority, and there is also grave violation in non-communicating vital portion of the "Certificate of Origin", on which heavy reliance has been placed in the grounds of detention. Finally, we conclude that the certificate of authentication which is an integral part of the "Certificate of Origin", granted by Sri Lanka has not been supplied to the detenu. Non-furnishing and non-placing of all or any of the documents referred to above vitiate the satisfaction and seriously handicap the detenu in making proper representation. Further, as rightly pointed out, the "Certificate of Origin" contains a column showing that the goods are Grade "A" goods and the said column requires to see Notes overleaf, but the backside of "Certificate of Origin" has not been furnished to the detenu or placed

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before the detaining authority. For all these reasons, we accept the contention raised by the learned senior counsel for the petitioner and hold that because of the same, the satisfaction arrived at by the detaining authority is defective and in any event, the detenu is prejudiced due to the non-supply of relevant documents for making effective representation, which vitiates the impugned detention order dated 30.06.2006.

10. Next contention relates to non-supply of relevant documents in the language (Gujarati) known to the detenu. Mr. B. Kumar, learned senior counsel for the petitioner submitted that the detenu knows only Gujarati to read and write and he does not know English or Tamil to read, though he has a little knowledge of Tamil and English to speak and understand. It is also his claim that even though the grounds of detention were furnished in Gujarati language, almost all the documents which are in English have not been translated and supplied to the detenu. According to him, these documents run to almost 71 pages and non-supply of all the documents in Gujarati is a clear infringement of right under Article 22 (5) of the Constitution of India. It is also his claim that the translation of grounds in Gujarati is defective and most of the words are in English only. In the counter affidavit filed by the Deputy Secretary to Government, Public (Law and Order) Department, Secretariat, Chennai 9, it is explained that pursuant to five summons sent to him, in connection with import of cloves and betel nuts through Port of Tuticorin, the detenu appeared on 02.06.2006 and expressed that he has a very little knowledge in English and requested to allow Thiru Firoz, his cousin brother, who had come with him to assist him in understanding and responding the queries. The said request was accepted and accordingly, his cousin Firoz assisted him. The statement of the detenu was typed in computer at his request and at the foot of the said statement, the detenu himself has made an endorsement in his own handwriting in English to the effect that the contents of the statement are true and the said statement has been given by him voluntarily without any threat or coercion. The statement was read over and explained to him in Gujarati by his cousin Firoz and he accepted the same to be correct. The said Firoz has also made an endorsement at the foot of the said statement to the effect that he assisted his cousin Haji Sumar, i.e., the detenu during interrogation by the Director of Revenue Intelligence Officers, he read the statement and explained to him in Gujarati, and the statement was typed by the Officer at their request and the same was accepted by the detenu as correct.

11. As rightly pointed out by the Additional Public Prosecutor that the detenu did not raise any dispute over the above statement at the earliest opportunity available to him, i.e., at the time of remand by the learned Magistrate before whom he was a free person to voice his grievance. Admittedly, no complaint was made to the learned Magistrate when he ordered remand of the detenu. The statement of the detenu also reveals that when he has to talk with his supplier Siddarth at Indonesia, he would talk only in English and he used to talk with Najimudeen Naushad

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Hassan of Sri Lanka only in Tamil and at Indian Customs, he would talk in Hindi and Tamil. It is also brought to our notice that for the summons dated 23.03.2006, the detenu sent a reply dated 30.03.2006 in English, for the summons dated 03.042006, he sent reply in English and for the summons dated 25.05.2006, he sent reply in English. The detenu has also stated that as partner of M/s. Diamond Traders, it was he who had placed orders and looked after the imports in the name of M/s. Diamond Traders. It is also relevant to point out that in the representation dated 20.07.2006 sent by his wife to the Secretary to Government of India, Ministry of Finance, Department of Revenue, New Delhi, it is stated that her husband is engaged in the business of import for many years and he used to make correspondence with Government Departments in English. It is further brought to our notice that for the five summons issued to him, the detenu sent letters in English seeking adjournments for various reasons. Further, the materials relating to the grounds of detention were explained to the detenu in Gujarati and he received the same under acknowledgment. In such circumstances, as rightly pointed out by the learned Additional Public Prosecutor, he cannot claim ignorance of his knowledge of English, inasmuch as the documents referred to by him in paragraphs 5 to 5.4 of the affidavit, viz., Bills of Entry, the liner Bills of Lading, liner master Bills of Lading, house Bills of Lading, multi-model transport Bills of Lading, Inspection Notes, packing lists and country of Origin Certificates are all documents in English, which are filed as such and understood by every importer, particularly in the International Trade relating to import. Further, those documents were explained to him in Gujarati while they were served on him along with the grounds of detention. It is also brought to our notice that a person by name, Thiru Dean, who was introduced as contact person for M/s. Spiceco International (Pvt.) Ltd. disclosed that the detenu - Haji Sumar is well known to him for the last four years and he used to talk to him over phone and also he perfected several transactions for last four years. In view of the fact that the detenu was very well assisted throughout by his cousin Firoz, supply of the relevant documents in the language known to him (Gujarati) and because of his experience in the Foreign Trade for the last several years, his correspondence with the Government officials in English, we are of the view that the detenu is in no way prejudiced either in understanding the grounds of detention or in making representation and accordingly, the decisions relied on, viz., AIR 1962 SC 911 (Harikrishnan vs. State of Maharashtra); AIR 1999 SC 618 (Powanammal vs. State of Tamil Nadu); HCP.No.591 of 2004 dated 21.09.2004 (S.M. Hussain vs. State of Tamilnadu); HCP.No.301 of 2005 dated 28.07.2005 (A. Ramzan Farzana vs. Secretary to Government of Tamil Nadu) and 2005 Crl. LJ 738 (Seematti vs. Secretary to Government of Tamil Nadu, Home Department) are not applicable to the case on hand.

12. With regard to non-consideration of the representation addressed to the Minister for Law, Government of Tamil Nadu, in paragraph 15 of the counter affidavit filed by the Deputy Secretary to Government, Public (Law and Order) Department, Secretariat, Chennai 9, it is specifically stated,

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" I submit that the representation of the detenu, dated 21.06.2006 addressed to the Hon'ble Minister for Law, as contended by the detenu, has not been received by the Government till passing of detention order." In the same counter, in para 16, the deponent has stated, "I submit that the representation of the deponent on behalf of the detenu has not been received by the Government." Though the learned senior counsel has placed proof regarding despatching letters to the said addressee, our verification shows that the Department concerned was not properly addressed and in any way, there is no reason to disbelieve the specific assertion made by the Deputy Secretary to Government to the effect that the Government has not received such representation. Accordingly, we accept the plea taken in the counter affidavit and reject the contention of the learned senior counsel for the petitioner.

In the light of what is stated above, the impugned detention order is liable to be set aside and accordingly this petition is allowed. The detenu is directed to be set at liberty forthwith from the custody unless he is required in connection with any other case.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to Government
   State of Tamil Nadu
   Public (SC) Department
   Fort St. George
   Chennai 60 009.

2. The Secretary to the Government
   The Union of India
   Ministry of Finance,
   Department of Revenue
   (COFEPOSA-UNIT), New Delhi.

3. The Public Prosecutor,
   High Court, Madras.

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4. The SAR, (COFEPOSA),
   High Court, Madras.

5. The Superintendent,
   Central Prison,
   Chennai.

6. The Joint Secretary to Government,
   Public (L & O),
   Fort St.George, Chennai - 9.

1 cc To Mr.P.Kumaresan, ACGSC, SR.
1 cc To Mr.R.Loganathan, Advocate, SR.52366.

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